IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2984 OF 2004

Shubhada Sunil Phansekar)
501, Prajakta Co-op.Hsg.Society,)
Plot No.30, Sector IV Koperkhani,)
Navi Mumbai 400 709.) ..Petitioner

V/s.

1. M/s.Travel Corporation (India))
   Limited,)
   Chander Mukhi, Nariman Point,)
   Mumbai 400 021,)

2. Riva Bakshi,)
   Manager-Personnel & Administrative,)
   M/s.Travel Corporation(India),)
   Limited, Chander Mukhi,)
   Nariman Point,)
   Mumbai 400 021.)

3. A.H. Shingne)
   Presiding Officer,)
   9th Labour Court,)
   Ground Floor, New Administrative)
   Bldg. Opp.Chetana College,)
   Bandra (East),)
   Mumbai 400 051.)

4. P.K. Chavare,)
   President,)
   Industrial Cout,)
   1st floor, New Adminstrative Bldg.,)
   Opp.Chetana College,)
   Bandra (East), Mumbai 400 051.) ..Respondents

Mr.V.P. Vaidya, Advocate for the Petitioner.

Mr.Mitra Das and Ms.Vasanti Kunder, Advocates for the Respondents.

CORAM : V.M. KANADE, J.

DATED : MARCH 22, 2007

ORAL JUDGMENT :-

1. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

2. The petitioner is challenging the order passed by the Labour Court in a complaint (ULP) No.261/2000 and Revision Application (ULP) No.48/2003 whereby the Labour Court dismissed the complaint filed by the petitioner which order was confirmed by the Industrial Court in revision.

3. Brief facts which are relevant for the purpose of deciding this petition are as under :-

4. The petitioner was working with respondent no.1 as Assistant from 24.11.1980. Her services were confirmed in 1981. The Respondent no.1 company has various branches in India and when the petitioner was appointed, it was specifically stated in the appointment letter that the petitioner was liable to be transferred to its offices. The company issued a transfer order transferring the petitioner from Dubai to New Delhi by order dated 26th June, 1999. The petitioner was directed to report to the Delhi Office on 12th July,

1999. The petitioner challenged the said transfer order by filing a complaint of Unfair Labour Practice before the Industrial Court on 14th September, 1999. The Industrial Court stayed the order of transfer.

5. It is the case of the petitioner that though this order of transfer was stayed and the petitioner reported to the Bombay office, she was not assigned any work. On 19th February, 2000, a stay granted by the Industrial Court was vacated by the High Court. Against this order, the petitioner preferred an appeal before the Division Bench of the High Court, however, by order dated 3rd March, 2000, the appeal was dismissed. Thereafter on 17th July, 2000, the petitioner filed a Special Leave Petition in the Supreme Court. The petitioner made a request for leave on the ground that there was 57 days leave to her credit and stated that her son’s examination was to be held in the month of April and she wanted leave. However, her application for leave was rejected.

6. It is the case of respondent no.1 that thereafter two letters were sent asking the petitioner to join the transfer place on 22rd March, 2000, however,

it is the case of respondent no.1 that inspite of receipt of these two letters, she did not report to work. On 24th March, 2000, the services of the petitioner were terminated. Thereafter, the petitioner filed the complaint of unfair labour practice with the Labour Court in which it was alleged that there was breach of the Standing Orders and victimization of the petitioner by the respondent no.1. By order dated 30th August, 2002, the complaint was rejected. Against this order, the petitioner preferred a revision application, however, by order dated 31st March, 2004, the revision application is also rejected. Against the said order, the petitioner has preferred this writ petition under Article 226 of the Constitution of India.

7. Shri Vaidya, learned Counsel appearing on behalf of the petitioner submitted that the order of termination was punitive in nature which was evident from the admission given by the respondent witness in cross-examination and on account of other material and the facts and circumstances on record and therefore, an enquiry ought to have been held and an opportunity should have been given to the petitioner. He submitted that therefore, the mandatory procedure laid down under

the said Act was not followed. The provisions of the Standing Orders also were violated. He invited my attention to the order of termination and the findings which were recorded by the Labour Court and the Industrial Court as also the complaint, written statement and the notes of evidence of the petitioner and the respondent. He submitted that alternatively, even if it was held that the order of termination was not punitive in nature, even then it amounted to retrenchment and the mandatory provision of Section 25F, therefore, even in such a case is required to be followed. He submitted that the Labour Court was not justified in rejecting the complaint when admittedly not reporting to the place of transfer was a technical misconduct not warranting the punishment of dismissal, particularly, in the light of the fact that at the time of the Order of termination was issued, the petitioner had already applied for leave and that SLP which was filed by the petitioner was pending in the Supreme court. He submitted that it was therefore a clearly case of victimisation and the colourable exercise of power and the order of termination was issued malafidely which was evident from the sequence of events and admission which was given by the respondent. He also

submitted that Section 25J of the said Act clearly stated that the provisions of said Chapter override any contract or Standing Order. He submitted that though in the order of appointment there was a provision of termination by giving one month's notice or that the Standing Order may have provided for termination by giving one month's notice, the provision of Section 25J will override the said contract and the Standing Order and therefore, it was necessary for the respondent company to have followed the mandatory provisions of Section 25F.

8. The learned Counsel for the respondent, on the other hand, submitted that the respondent had no other option but to terminate the services of the petitioner as the petitioner had refused to join the place of transfer. It is submitted that her challenge to transfer had already been rejected by the Labour Court, by the learned Single Judge of the High Court and the Division Bench of the High Court and even, a SLP was dismissed. Thereafter two letters were sent by the company and inspite of that, she did not respond to the said letters and also did not report to transfer place. He further invited my attention to the order of

appointment in which it was categorically mentioned that the services of the petitioner would be terminated by giving one month's notice and that it was specifically mentioned in the order of appointment that the petitioner was liable to be transferred at any place where the company had its branches. He also invited my attention to the Standing Order of 1981. He further submitted that therefore, the Order of Termination was not punitive in nature. He further submitted that there was no pleading regarding the retrenchment and therefore, it was not open for the petitioner to argue that the provisions of Section 25F were not followed. He submitted that the complaint of the petitioner challenging the order of transfer having been rejected by the Supreme Court, it was not open for the petitioner to file another complaint on the ground of apprehension of termination since at that time, the Order of Termination was not passed. It is submitted that subsequently, the Order of Termination was passed. He submitted that therefore, no case has been made out of victimisation. He invited my attention to the correspondence between the parties.

9. Shri Vaidya submitted that the submission of the

learned Counsel for the respondent that there was no pleading in respect of the question of retrenchment was incorrect. He invited my attention to the complaint as well as the pleadings which were made to that effect. Both the counsel relied upon number of judgments which have been passed by the appropriate courts.

10. I have given my anxious consideration to the submissions made by both the learned Counsel for the petitioner and the learned Counsel for the respondent. The facts disclose that the complaint filed by the petitioner challenging the Order of Transfer was rejected and the matter was contested upto the Supreme Court, however, the Apex court also confirmed the order of Labour Court. The case of the petitioner of victimisation on account of transfer, therefore, was rejected upto the Supreme Court. Respondent no.1 had written two letters asking her to report to the transfer place. It was made clear in the said letter that if she did not report to the transfer place, the appropriate steps would be taken and thereafter, the order of termination was issued on 24th March, 2000. Both the Labour Court as well as the Industrial Court have given a concurrent findings and have held that the complainant

has not proved that the respondents had involved in unfair labour practice under Item 1(a), (b), (d), (f) and (g) of Schedule IV of the MRTU & PULP Act, 1971 and therefore, she was not entitled to get the relief of reinstatement with full backwages. After having gone through both these orders, in my view, it would not be correct to say that both these courts have not taken into consideration the legal and factual aspect of the case. Both the Courts have considered the explanation which is given by the complainant for not joining the place of transfer as baseless and in the light of the various facts and circumstances which were brought on record, both the courts have held that the termination in question could not be said to be punitive in nature.

11. Considering the findings which are recorded by the Labour Court and the industrial Court, in my view, it would not be possible to interfere with the said findings. There is no merit in the submission made by the learned Counsel for the petitioner.

. Writ Petition, therefore, is dismissed.

(V.M. Kanade, J.)